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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,368	01/10/2002	Thomas E. Broome	1001.1388101	8240

28075 7590 05/11/2005

CROMPTON, SEAGER & TUFTE, LLC  
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MINNEAPOLIS, MN 55403-2420

EXAMINER

PANTUCK, BRADFORD C

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 05/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/044,368

Applicant(s)

BROOME ET AL.

Examiner

Bradford C Pantuck

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03/03/2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5-35, 37 and 39-51 is/are pending in the application.
- 4a) Of the above claim(s) 5-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 32-35, 37, and 39-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 32-35, 46, 50, and 51 are rejected under 35 U.S.C. 102(e) as being anticipated by Publication No. US 2002/0045916 A1 to Gray et al. Figure 7 shows a filter assembly 90; elongate shaft (guide wire evident); filter attachment region 94; first tapered portion 95; second tapered portion (conical section evident between numerals 92 and 94 in Fig. 7); apertures are located throughout the filter because the filter is a “strainer” made out of a “polymeric mesh interwoven with the metallic filaments”—see paragraph [0014].
2. Regarding Claims 33 and 46, the filter is collapsible so necessarily has contracted and expanded versions—see paragraph [0012].
3. Regarding Claims 34 and 35, Fig. 7 clearly shows each of the first and second tapered portions having conical shapes.

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4. Regarding Claims 50 and 51, cylindrical section 92 is a limiter that limits the base diameter of the first tapered portion; the whole filter is made out of thin strands metal (i.e., "wire") formed into loops.
5. Claims 32, 33, 37, 39-45, and 47-49 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,814,064 to Daniel et al. Regarding Claims 32 and 33, Daniel discloses in Fig. 18B an expanded filter system 250: elongate shaft 258; filter attachment at the distal end of the filter 262; filtering region 262 is evidently made out of mesh (column 11, lines 7-9) necessarily having a plurality of apertures. Filtering region 262 defines two portions: a first distal portion that has an outer surface with a convex shape and a second more proximal portion that has an outer surface with a concave shape. In fact, the two separate portions are defined by (separated by) this junction where the outer shape of the filter changes from being convex to concave. Each of the two tapered portions defines many different included angles.
6. Regarding Claim 37, the membrane 242 includes polyurethane [column 10 lines 44-45].
7. Regarding Claims 39-45, Daniel discloses moving tube 254 distally (see progression from Fig. 18A – 18B – 18 C – 18D) to contact the inner surface/struts of the filter drawing it in on itself.
8. Regarding Claims 47 and 48, the base diameter of the first tapered portion is smaller, but similar to the size of the retrieval sheath (254).

9. Regarding Claim 49, in Fig. 18D the retrieval sheath has a similar diameter to the diameter of the second tapered portion.

***Response to Arguments***

10. Applicant's arguments, see "Remarks", filed 03/03/2005, with respect to the rejection(s) of claim(s) 32-51 under 35 U.S.C. 102(e) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of U.S. Patent No. 5,814,064 to Daniel et al. and Publication No. US 2002/0045916 A1 to Gray et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradford C Pantuck whose telephone number is (571) 272-4701. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*BCP*  
BCP  
May 2, 2005

*AN*  
**ANH TUAN T. NGUYEN**  
**SUPERVISORY PATENT EXAMINER**  
*5/2/05*